

Internal Revenue Service

Department of the Treasury

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Person To Contact:

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Telephone Number:

Refer Reply To:

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Date:

February 14, 2013

Re: Request for Extension of Time to Make the Election Not to Deduct the Additional First Year Depreciation

Taxpayer =

A =

B =

C =

D =

E =

State =

Date1 =

Date2 =

Date3 =

Date4 =

Dear :

This letter responds to a letter dated December 6, 2012, and subsequent correspondence, submitted by Taxpayer requesting an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the 100-percent additional first year depreciation under § 168(k)(5) of the Internal Revenue Code for 5-year, 7-year, and 15-year classes of qualified property placed in service in the taxable year ended Date3.

FACTS

Taxpayer represents that the facts are as follows:

Taxpayer is a corporation organized under the laws of State and is a taxable REIT subsidiary of A. Prior to Date1, Taxpayer was a stand-alone corporation. Beginning Date1, Taxpayer became the parent of a consolidated group with B subsidiaries. The subsidiaries were liquidated in Date2. Taxpayer presently owns

various subsidiaries that are single member limited liability companies (LLCs) and disregarded entities for federal tax purposes. Taxpayer also owns C controlled foreign corporations. Taxpayer is engaged in the business of owning and operating assisted living facilities throughout the D. Taxpayer's federal tax return for the taxable year ended Date3 was timely filed in Date4. Taxpayer prepared the return and Taxpayer's outside accountant, E, reviewed it.

On this return, Taxpayer did not deduct the additional first year depreciation for all eligible classes of qualified property placed in service by Taxpayer in the taxable year ended Date3. Taxpayer, however, inadvertently failed to attach to the return the required election statement not to claim the additional first year depreciation deduction for all eligible classes of qualified property placed in service for the taxable year ended Date3. Subsequent to filing its federal tax return for the taxable year ended Date3, Taxpayer discovered that it had failed to attach the election statement to the return for the taxable year ended Date3 with respect to all eligible classes of qualified property placed in service in that taxable year. Thereafter, Taxpayer consulted with E for advice to correct this mistake.

RULING REQUESTED

Taxpayer requests an extension of time pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make the election not to deduct the 100-percent additional first year depreciation under § 168(k)(5) for 5-year, 7-year, and 15-year classes of qualified property placed in service in the taxable year ended Date3.

LAW AND ANALYSIS

Section 168(k)(5) provides a 100-percent additional first year depreciation deduction for the taxable year in which qualified property qualifying for the 100-percent additional first year depreciation is placed in service by a taxpayer.

Section 168(k)(2)(D)(iii) provides that a taxpayer may elect not to deduct the additional first year depreciation for any class of property placed in service during the taxable year. The term "class of property" is defined in § 1.168(k)-1(e)(2) of the Income Tax Regulations as meaning, in general, each class of property described in § 168(e) (for example, 5-year property). See section 3.01 of Rev. Proc. 2011-26, 2011-16 I.R.B. 664 (rules similar to the rules in § 1.168(k)-1 for "qualified property" or for "30-percent additional first year depreciation deduction" apply for purposes of § 168(k) as currently in effect).

Section 1.168(k)-1(e)(1) provides that the election not to deduct additional first year depreciation for a class of property applies to all qualified property that is in that class of property and placed in service in the same taxable year. See section 4.01 of Rev. Proc. 2011-26.

Section 1.168(k)-1(e)(3)(i) provides that the election not to deduct additional first year depreciation must be made by the due date (including extensions) of the federal tax return for the taxable year in which the property is placed in service by the taxpayer.

Section 1.168(k)-1(e)(3)(ii) provides that the election not to deduct additional first year depreciation must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The instructions to Form 4562 for the taxable year ended Date1 provided that the election not to deduct the additional first year depreciation is made by attaching a statement to the taxpayer's timely filed tax return indicating that the taxpayer is electing not to deduct the additional first year depreciation and the class of property for which the taxpayer is making the election.

Under § 301.9100-1, the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

CONCLUSIONS

Based solely on the facts and representations submitted, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Taxpayer is granted 60 calendar days from the date of this letter to make the election not to deduct the 100-percent additional first year depreciation under § 168(k)(5) for 5-year, 7-year, and 15-year classes of property placed in service by Taxpayer during the taxable year ended Date3 that qualify for the additional first year depreciation. This election must be made by Taxpayer filing an amended federal tax return for that taxable year, with a statement indicating that Taxpayer is electing not to deduct the additional first year depreciation for 5-year, 7-year, and 15-year classes of property placed in service by Taxpayer during that taxable year.

Except as specifically set forth above, we express no opinion concerning the federal income tax consequences of the facts described above under any other provisions of the Code (including other subsections of § 168). Specifically, no opinion is

expressed or implied on whether any item of depreciable property placed in service by Taxpayer during the taxable year ended Date3 is eligible for the additional first year depreciation deduction.

In accordance with the power of attorney, we are sending a copy of this letter to Taxpayer's authorized representative. We are also sending a copy of this letter to the appropriate Industry Director, Large Business & International Division (LB&I).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Willie E. Armstrong, Jr.

Willie E. Armstrong, Jr.
Senior Technician Reviewer, Branch 7
Office of Associate Chief Counsel
(Income Tax and Accounting)

Enclosures (2):

copy of this letter

copy for section 6110 purposes